



iFiber
PO Box 755
Sycamore, IL 60178
info@iFiber.org
www.iFiber.org

iFiber Services Agreement Community Anchor Institutions

This SERVICES AGREEMENT, dated as of March 1, 2014 (as defined in Exhibit A – Locations, Pricing and Network Design) is made by and between iFiber, an Illinois not-for-profit corporation, in Sycamore, Illinois and Cherry Valley Public Library District (Customer”) a local government/library, located at 755. E. State St. Cherry Valley, IL.

1. Purpose of iFiber

iFiber was organized as the operating entity of a broadband fiber network that was funded by a grant from the United States Department of Commerce, National Telecommunications and Information Administration (NTIA). iFiber provides general technical and development support, network services and co-location to other governmental and not-for-profit organizations.

2. Services Provided

iFiber will provide to Customer the following services as mutually agreed upon and set forth in Exhibit A:

- (a) *Transport.* Network services that provide for a point to point location through the iFiber infrastructure. iFiber can support 50 Mbps, 100 Mbps or 1 Gbps speeds.
- (b) *Internet Services.* iFiber can provide speeds up to a gigabit to competitively priced service providers for general commodity Internet access.
- (c) *Enhanced Services.* iFiber can provide competitively priced services such as VOIP, IPTV, and VM (Virtual Machine).
- (d) *Call-Center Services.* iFiber can provide first and second level Customer support services to report and track network-related problems.
- (e) *NOC Monitoring Services.* iFiber can offer alerting and monitoring service to devices connected through the iFiber fiber network infrastructure. Monitoring services provide an on-call reporting system that provides the end-user notification of failing devices on the network.

3. Restrictions

- (a) *Hardware.* The infrastructure intended for public use is owned by iFiber. Customers are not allowed access to equipment operated and owned by iFiber. Initial building equipment will be provided by iFiber through funding from NTIA grant funding. Future equipment upgrades and/or replacements will be the responsibility of the Customer.
- (b) *Installation of Equipment.* Any network equipment required to be installed into the iFiber infrastructure will be installed by authorized iFiber personnel only. iFiber will authorize and specify equipment compatible with iFiber on an as needed basis.
- (c) *Authorized Use.* iFiber network connections are only for use by the authorized party to which service is granted. Connections may not be shared by any means including wired or wireless networking except as authorized by iFiber.

4. Maintenance

- (a) *Facilities.* iFiber reserves the right to schedule regular or emergency maintenance on the network equipment. iFiber's general policy for scheduling maintenance is with advanced warning and during off peak usage hours.
- (b) *Losses.* iFiber cannot be held liable for losses incurred due to planned or unplanned outages in service.

5. Security

- (a) *Right to Monitor and Control Content.* iFiber has no obligation to monitor information or material on the system or network. However, Customer agrees that iFiber has the right to monitor the system electronically from time to time to disclose any information as necessary to satisfy the law, regulation, or other governmental request, to operate properly, or to protect itself or its users. iFiber will not intentionally monitor or disclose any private information unless required by law.
- (b) *Laws.* Use of the services provided must comply with all existing Federal, State, and Local rules and regulations.

6. Payment

Customer shall pay for Services in this Agreement according to the schedule in Exhibit A. Without limiting the foregoing, Customer shall pay any one-time or recurring telecommunications service charges (regardless of whether such costs are passed through by iFiber or billed separately by a telecommunications provider), and all sales and use taxes, as well as duties or levies arising in connection with the Services. All other amounts will be billed as the service or charge is incurred. Payment is due within thirty (30) days from the date appearing on the invoice. Customer will be charged a 1.5% late charge on the first day of each month on all invoices remaining unpaid forty-five (45) days after the date appearing on the invoice. These payment terms do not apply to amounts paid to iFiber through the Universal Services Fund (USF) program.

7. Term and Termination

- (a) *Term.* The term of this Agreement begins on the first date that network connectivity is provided by iFiber, and shall be for a period of five (5) years.
- (b) *Renewals.* Unless either party gives a written termination notice at least thirty (30) days prior to the end of the current term (whether it is the initial term or a renewal term), the term of this Agreement will be renewed automatically for a similar term as the term which is then in effect.
- (c) *Early Termination.* If Customer terminates this Agreement for any reason other than iFiber's breach of its responsibilities under this Agreement before the end of the term, or if iFiber terminates this Agreement because of a violation by Customer of any term or provision of this Agreement including, but not limited to, Customer's failure to make any payment when due, then Customer shall be responsible for and shall pay (i) all telecommunications service charges applicable through the date service is actually terminated, regardless of the effective date of termination of the Agreement, and any related administrative fees charged by iFiber, (ii) any additional early termination penalties or charges assessed by the telecommunications carrier, (iii) the balance of any remaining fiber access fees or amortized install charges, (iv) all costs associated with disconnecting Customer's service and removing any equipment from Customer's site (charged at the then-applicable rates for maintenance), (v) any outstanding amounts previously incurred for maintenance, (vi) if Customer previously received a discount as a result of agreeing to a term longer than one (1) year, an early termination penalty equal to the total amount of the discount, as calculated without any reduction or proration to reflect the point during the term at which the termination occurs, and the balance remaining plus any assessed administrative charge are due and payable upon termination.. In the event Customer requests iFiber to continue providing any portion of the Services beyond the requested termination date, Customer agrees to pay iFiber for those Services at the then-applicable rates in accordance with the terms of payment provided in Section 6 above. The above termination penalties do not apply to service moves or upgrades.
- (d) *Termination.* Upon termination of dedicated service with iFiber, whether such termination occurs at the end of the initial term or any subsequent terms, or as an early termination during an agreement period, Customer agrees that all IP addresses assigned from iFiber's CIDR block shall be promptly returned. In addition, Customer shall be responsible for transitioning responsibility of primary and/or secondary DNS to their own DNS server, or that of its new carrier.
- (e) *Price Adjustments.* If iFiber initiates reduced Customer Fees to its Non-Profit Customers during the Agreement period, Customer may renew this Agreement at the new rates for a term of equal or greater length than the balance remaining on the initial term. In all instances, the renewal will be for a minimum of twelve (12) months and the renewal rates will reflect the term discount of the new term period. If this Agreement provides Customer access via fiber connectivity, the Customer may renew at the new rates for a period coterminous with the initial agreement term.

8. Limited Warranty

iFiber will supply, at no charge, new or rebuilt replacements for defective equipment or parts for the initial term of this Agreement. This Limited Warranty does not cover damages due to accident, misuse, abuse or negligence. REPAIR OR REPLACEMENT AS PROVIDED UNDER THIS LIMITED WARRANTY IS THE EXCLUSIVE REMEDY OF CUSTOMER. iFiber SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS

OR IMPLIED WARRANTY OR ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Rights and Obligations of Customer

Customer is Responsible to Its Authorized Users. Customer is solely responsible for communicating with its own authorized users, and for handling all complaints and trouble reports made by its authorized users, with respect to the Services provided hereunder.

10. Rights and Obligations of iFiber

iFiber is Responsible for the Operation and Maintenance of the Services. Customer shall be responsible for maintaining and managing its own network that interfaces with the Services. iFiber is not responsible for cabling that connects Customer-owned equipment to iFiber equipment or the Services. Any interruption in the Services that is caused by the malfunction or interruption of any physical telecommunications media or facility (including, but not limited to cables and fiber optic lines) or by any malfunction or manufacturer's defects of equipment either provided by iFiber to Customer or separately purchased by Customer will not be deemed a breach of iFiber's obligations under this Agreement.

11. Indemnification

Customer will indemnify, save harmless and defend iFiber and all of iFiber's members and Customers, as well as their respective employees, officers, directors and agents (collectively "Indemnified Parties") from and against any claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative) and expenses (including, but not limited to reasonable attorney's fees incurred with or without suit, in arbitration or mediation, on appeal or in a bankruptcy or similar proceeding) (collectively "Claims") threatened, asserted, or filed by a third party against any of the Indemnified Parties to the extent that such third party Claims arise out of or relate to (i) the breach or alleged breach of this Agreement by Customer; (ii) any negligent or tortious act or omission to act of Customer; or (iii) any claim that the data content delivered by Customer via the Services provided by iFiber under this Agreement constitutes an infringement of any confidential information, trade secret, patent, copyright, trademark, trade name, or other legal right of any third party.

12. Limitation of Liability

CUSTOMERS ACCESS TO AND USE OF THE SERVICES ARE AT ITS SOLE RISK. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8 ABOVE, THE SERVICES PROVIDED BY iFiber ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. iFiber DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR FREE OF HARMFUL COMPONENTS. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8 ABOVE, iFiber MAKES NO EXPRESSED OR IMPLIED WARRANTIES. iFiber AND ITS EMPLOYEES ARE NOT LIABLE FOR ANY COSTS OR DAMAGES ARISING FROM CUSTOMERS USE OF THE SERVICES OR THE INTERNET, INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY,

MULTIPLE, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. CUSTOMER ASSUMES FULL RESPONSIBILITY AND RISK FOR THE USE OF THE SERVICES AND THE INTERNET, AND IS SOLELY RESPONSIBLE FOR EVALUATING THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES PROVIDED HEREUNDER. If Customer is dissatisfied with the Service(s) or with any terms, conditions, rules, policies, guidelines or practices of Provider in operating the Services(s), Customer's sole and exclusive remedy is to terminate this Agreement in accordance with Section 7, above, and discontinue using the Service(s). iFiber's cumulative liability to Customer or any third party for any and all claims relating to the use of the equipment and Services provided by iFiber shall in no event exceed the amount of the annual Customer fees paid by Customer to iFiber during the twelve (12) month period ending on the date of the event giving rise to the claim. iFiber shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services.

13. Data Content

iFiber is not liable for the content of any data transferred either to or from Customer via the Services provided by iFiber, nor for any loss or damage, whether personal, material, or financial, suffered by Customer as a direct or indirect consequence of the Services provided by iFiber.

14. Miscellaneous

- (a) *Governing Law; Jurisdiction.* The validity, interpretation, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of Illinois.
- (b) *Entire Agreement.* This Agreement, and the Service Order Forms entered into by the Parties from time-to time, is the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement may not be amended except upon the written consent of the parties. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or in equity. The waiver by any party of the time for performance of any act or condition hereunder shall not constitute a waiver of the act or condition itself.
- (c) *Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Customer may not assign this Agreement without the prior written consent of iFiber.
- (d) *Headings; Severability.* Headings used in this Agreement are for reference purposes only and shall not constitute a part hereof or affect the meaning or interpretation of this Agreement. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.
- (e) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

iFiber

By:

John L. Lewis

Printed Name: John L. Lewis

Title:

Chairman

Date Signed:

2/24/14

Customer

By:

Eve G. Kirk

Printed Name:

Eve G. Kirk

Title:

Cherry Valley Library Director

Date Signed:

March 1, 2014

Exhibit A

Organization: Cherry Valley Public Library District

Supported Locations

<i>Location</i>	<i>Address</i>	<i>City</i>	<i>Zip</i>
Cherry Valley Public Library	755 E State St	Cherry Valley	61016

Fiber Services and Pricing

<i>Location</i>	<i>Service</i>	<i>Yearly Cost</i>	<i>One Time Costs</i>
Cherry Valley Public Library	Gigabit Service	\$3,600	NA

Add-on Services and Pricing

<i>Location</i>	<i>Service</i>	<i>Yearly Cost</i>
Cherry Valley Public Library	ICN Access	\$ N/C

Equipment Provided

1. Demarcation Carrier Ethernet switch
2. Layer 3 switch
3. Fiber optic interface modules
4. Fiber optic patch cables, single mode

User Requirements

1. Provide adequate space, cooling and power
2. Provide all CAT6 patch cables
3. Provide a network interface point for iFiber to connect into
4. Allow timely access to the facility for the fiber optic cable and related equipment installations